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8 Attorneys for Defendant
9 POSTMASTER GENERAL

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 MAY THIN ZAR and PHYU CASTILLO,
14 Plaintiffs,
15 v.

16 MEGAN J. BRENNAN, POSTMASTER
17 GENERAL OF THE UNITED STATES
18 POSTAL SERVICE,
19 Defendant.

Case No. 19-250-MMC

**STIPULATION AND AGREEMENT OF
COMPROMISE AND SETTLEMENT AND
[PROPOSED] ORDER**

20 IT IS HEREBY STIPULATED by and between the parties, by and through their respective
21 attorneys, as follows:

22 WHEREAS, Plaintiffs filed the above-captioned action on January 14, 2019;

23 WHEREAS, Plaintiff Thin Zar has filed the following administrative EEO complaint with Postal
24 Service: *May Thin Zar v. Megan J. Brennan*, Agency Case No. 4F-940-0014-18.

25 WHEREAS, Plaintiff Castillo has filed the following administrative EEO complaint with Postal
26 Service: *Phyu Castillo v. Megan J. Brennan*, Agency Case No. 4F-940-0028-18.
27
28

1 WHEREAS, through the above-captioned action, Plaintiffs allege that they were sexually
2 harassed by their 204b supervisor Ronaldo Caluag, and that said harassment included physical assaults
3 that led to emotional distress;

4 WHEREAS, Plaintiffs and Defendant wish to avoid any further litigation and controversy and to
5 settle and compromise fully any and all claims and issues that have been raised, or could have been
6 raised, in this action arising out of Plaintiffs' employment with Defendant, which have transpired prior
7 to the execution of this Settlement Agreement ("Agreement");

8 NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and
9 other good and valuable consideration, the Parties agree as follows:

10 1. **Settlement Consideration.** In full and final settlement of all claims in connection with the
11 above-captioned action, Defendant agrees that:

12 (a) **Monetary Consideration:** Defendant shall pay Plaintiffs three hundred eight five thousand
13 dollars (\$385,000.00) dollars ("Settlement Amount"), as a lump-sum payment to represent non-wage
14 compensatory damages. The Settlement Amount shall be divided between Plaintiffs evenly. One check
15 in the amount of one hundred ninety two thousand and five hundred dollars (\$192,500) will be made
16 payable to May Thin Zar. One check in the amount of one hundred ninety two thousand and five
17 hundred dollars (\$192,500) shall be made payable to Phyu Castillo. The checks will be mailed to
18 Plaintiffs in care of their counsel at the following address: Julia Parish and Katherine Wutchiett, Legal
19 Aid at Work, 180 Montgomery Street, Suite 600, San Francisco, CA 94104. Plaintiffs and their
20 attorneys have been informed that payment of the Settlement Amount may take sixty (60) days or more
21 to process from the date that the Court "so orders" this Agreement to process.

22 (b) **Non-Monetary Consideration:** Defendant agrees:

23 (1) To provide each Plaintiff with a letter, in the form of Exhibit A, stating that Ronaldo
24 Caluag may never supervise either Plaintiff.

25 (2) To inform Plaintiffs, in response to their inquiry, at which Postal Service location, if
26 any, Ronaldo Caluag is working. Plaintiffs must make said inquiry by calling the USPS Pacific
27 Area Law Office at (415) 550-5300.

28 (3) That the Postal Service will issue to Ronaldo Caluag the attached Exhibit B, along

1 with the attachments included therewith, and distribute the said Exhibit to the distributees
2 indicated thereon. Additionally, should Plaintiffs learn that Ronaldo Caluag has been transferred
3 to another Postal Service location, they may request, through the USPS Pacific Area Law Office
4 at (415) 550-5300, that Exhibit B be distributed to the installation head and each managerial
5 employee with authority over Mr. Caluag at that new location. The Postal Service will so
6 forward Exhibit B.

7 (4) That, within the next three months, the Postal Service will provide Ronaldo Caluag
8 with four (4) hours of in-person, individualized sexual harassment training, which includes
9 disabusing Mr. Caluag of his unfounded belief that the Postal Service “exonerated” him with
10 respect to Plaintiffs’ allegations of sexual harassment.

11 (5) That the Postal Service will, for the next four years, provide 30 minutes of semi-
12 annual sexual harassment training to the bargaining-unit employees stationed at the Daly City
13 Post Office at 1100 Sullivan Avenue in Daly City, CA, and Townsend Carrier Annex of the San
14 Francisco Post Office at 550 Townsend Street in San Francisco, CA (“the Locations”). At that
15 training, the Postal Service will hand out a one-page information sheet regarding discrimination,
16 retaliation, and harassment and reporting the same, in the form attached hereto as Exhibit C.
17 Additionally, in connection with each training, the Postal Service will conduct an informal
18 “climate survey” check-in, through which an appropriate Postal Service representative will
19 inquire whether any attendee has experienced sexual harassment and let the attendees know that
20 the representative is available to discuss any such concerns.

21 (6) That, within the next year, the Postal Service will provide each Executive and
22 Administrative Staff (“EAS”) and any bargaining-unit employee(s) then currently serving as
23 acting supervisors (“204b supervisors”) stationed at the Locations with four (4) hours of in-
24 person sexual harassment training. For the following three years thereafter, the Postal Service
25 will provide EAS and 204b supervisors stationed at the Locations with two (2) hours of in-
26 person sexual harassment training annually.

27 (7) That the Postal Service will provide Plaintiffs’ counsel semi-annual updates,
28 beginning six months after the execution of the Settlement Agreement and continuing every six

1 months for a period of four years, regarding its implementation of the foregoing non-monetary
2 terms.

3 2. **Release.** In consideration of the payment of the Settlement Amount and the other terms set
4 forth in this Stipulation and Agreement, Plaintiffs hereby release and forever discharge Defendant, the
5 United States Postal Service, and any and all of their past and present officials, agents, employees,
6 attorneys, insurers, their successors and assigns, from any and all obligations, damages, liabilities,
7 actions, causes of action, claims and demands of any kind and nature whatsoever, including claims
8 arising under the Age Discrimination in Employment Act, 29 U.S.C. § 633a, whether suspected or
9 unsuspected, at law or in equity, known or unknown, or omitted prior to the date they execute this
10 Agreement, which arise from or relate to Plaintiffs' employment with Defendant, except as stated in
11 Section 6, below.

12 3. **Attorneys' Fees.** Defendant will make a payment to Plaintiffs' counsel of two hundred
13 fifteen thousand dollars (\$215,000.00) in full satisfaction of all claims for attorneys' fees and costs
14 arising from work performed by Plaintiffs' counsel at all stages of litigation, including, but not limited
15 to, the pre-processing and processing of Plaintiffs' administrative and district court complaints in
16 connection with the above-captioned action, and any other EEO administrative proceedings which may
17 be currently pending. The \$215,000.00 payment will be made by check payable to Legal Aid at Work,
18 and mailed to Julia Parish and Katherine Wutchiett, Legal Aid at Work, 180 Montgomery Street, Suite
19 600, San Francisco, CA 94104.

20 4. **Continuing Jurisdiction.** The Court will have continuing jurisdiction for a period of four
21 years from the Effective Dates of this Agreement to enforce its terms.

22 5. **Dismissal.** In consideration of the payment of the Settlement Amount and the other terms of
23 this Agreement, Plaintiff agrees to execute a Stipulation of Dismissal within seven days of this
24 agreement, a copy of which is attached hereto as Exhibit D. The Stipulation of Dismissal shall dismiss,
25 with prejudice, all claims asserted in this action, or that could have been asserted in this action. The
26 fully executed Stipulation of Dismissal will be held by Defendant's attorney and will be filed with the
27 Court at the expiration of the period of the Court's retained jurisdiction, as discussed in paragraph 4,
28 above.

1 **6. Waiver of California Civil Code § 1542.** The provisions of California Civil Code Section
2 1542 are set forth below:

3 “A general release does not extend to claims that the creditor or releasing
4 party does not know or suspect to exist in his or her favor at the time of
5 executing the release and that, if known by him or her, would have
6 materially affected his or her settlement with the debtor or released party.”

7 Plaintiffs, having been apprised of the statutory language of Civil Code Section 1542 by Plaintiffs’
8 attorneys, and fully understanding the same, nevertheless elect to waive the benefits of any and all rights
9 Plaintiffs may have pursuant to the provision of that statute and any similar provision of federal law.
10 Plaintiffs understand that, if the facts concerning Plaintiffs’ claims and the liability of the government
11 for damages pertaining thereto are found hereinafter to be other than or different from the facts now
12 believed by them to be true, this Agreement shall be and remain effective notwithstanding such material
13 difference. No provision of this Agreement shall serve to waive any right to or eligibility for any
14 retirement benefit. Nothing in this Agreement waives any claims or rights that cannot be waived by law,
15 including Plaintiffs’ rights to: (a) file a charge with an administrative agency or participate in any
16 agency investigation or proceeding when waiver of such right is not permitted; (b) file a claim for or
17 seek workers’ compensation benefits, and (c) sue to enforce this Stipulation and Agreement. Nothing in
18 this Agreement is intended to affect or in any way limit Phyu Castillo’s right to participate and/or
19 cooperate in any investigation or proceeding arising from EEOC Case No. 520-2010-00280X, claim no.
M-124466.

20 **7. No Admission of Liability.** This is a compromise settlement of a disputed claim and
21 demand, which settlement does not constitute an admission of liability or fault on the part of the
22 Defendant, the Postal Service, or any of their past and present officials, agents, employees, attorneys, or
23 insurers on account of the events described in Plaintiffs’ complaint in this action.

24 **8. Tax Liability.** There shall be no withholding from the Settlement Amount. Plaintiffs
25 understand that this payment will be reported to the Internal Revenue Service, and that any questions as
26 to the tax liability, if any, as a result of this payment is a matter solely between Plaintiffs and the
27 relevant tax authorities. If any withholding or income tax liability is imposed upon Plaintiffs or
28 Plaintiffs’ counsel based on payment of the Settlement Amount, Plaintiffs or Plaintiffs’ counsel shall be

1 solely responsible for paying any such determined liability from any government agency thereof.
2 Nothing in this Agreement constitutes an agreement by the United States of America concerning the
3 characterization of the Settlement Amount for the purposes of the Internal Revenue Code, Title 26 of the
4 United States Code.

5 9. **Treasury Offset Program.** Nothing in this Agreement waives or modifies federal, state, or
6 local law pertaining to taxes, offsets, levies, and liens that may apply to this Agreement or the settlement
7 proceeds, and Plaintiff is executing this Agreement without reliance on any representation by Defendant
8 as to the application of any such law. Accordingly, the United States may offset against the Settlement
9 Amount Plaintiff's delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586
10 (2010).

11 10. **Choice of Law and Venue.** This Agreement is governed by the laws of the United States.
12 The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States
13 District Court for the Northern District of California.

14 11. **Construction.** Each party hereby stipulates that she has been represented by and has relied
15 upon independent counsel in the negotiations for the preparation of this Agreement, that she has had the
16 contents of the Agreement fully explained to her by such counsel, and is fully aware of and understands
17 all of the terms of the Agreement and the legal consequences thereof, and enters into this Agreement
18 knowingly and voluntarily. For purposes of construction, this Agreement shall be deemed to have been
19 drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that
20 reason in any subsequent dispute.

21 12. **Severability.** If any provision of this Agreement shall be invalid, illegal, or unenforceable,
22 the validity, legality, and enforceability of the remaining provision shall not in any way be affected or
23 impaired thereby.

24 13. **Integration.** This instrument shall constitute the entire Agreement between the parties, and
25 it is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by
26 the parties hereto with the advice of counsel, who have explained the legal effect of this Agreement.
27 The parties further acknowledge that no warranties or representations have been made on any subject
28 other than as set forth in this Agreement. This Agreement may not be altered, modified or otherwise

1 changed in any respect except by writing, duly executed by all of the parties or their authorized
2 representatives.

3 14. **Authority.** The signatories to this Agreement warrant and represent that they possess full
4 authority to bind the persons on whose behalf they are signing to the terms of the settlement.

5 15. **Execution in Counterparts.** It is contemplated that this Agreement may be executed in
6 several counterparts, with a separate signature page for each party. All such counterparts and signature
7 pages, together, shall be deemed to be one document.

8 16. **Knowing and Voluntary Waiver of Remedies Under Age Discrimination in**
9 **Employment Act.** Plaintiffs acknowledge that they have up to twenty-one (21) calendar days from the
10 date they receive this Agreement to review and consider this Agreement, discuss it with an attorney of
11 their choice, and decide to sign it or not sign it, although Plaintiffs may accept or return it to Defendant's
12 counsel at any time within those twenty-one (21) days. Plaintiffs are advised to consult Plaintiff's
13 attorney about the Agreement.

14 17. Once Plaintiffs signs and date this Agreement, Plaintiffs will have seven (7) days in which to
15 revoke acceptance. To revoke, Plaintiffs must send a written statement of revocation, which should be
16 mailed and faxed to: AUSA Wendy M. Garbers, United States Attorney's Office, 450 Golden Gate
17 Ave., San Francisco, CA 94102. Plaintiffs understand that if Plaintiffs revoke, this Agreement shall
18 have no effect. If Plaintiffs do not revoke, this Agreement will become effective on the eighth (8th) day
19 ("the Effective Date") after the date Plaintiffs sign and date this Agreement.

20 18. **Outstanding Liens for Medical and/or Psychological Treatment.** Plaintiffs are solely
21 responsible for satisfying any and all outstanding liens relating to Plaintiffs' medical treatment arising
22 out of the subject matter of this action. Plaintiffs shall indemnify Defendant from any liability
23 Defendant may incur from any lien claimant arising out of Plaintiffs' failure to satisfy outstanding
24 lien(s).

25
26 DATED: 10/30/2019



Plaintiff May Thin Zar

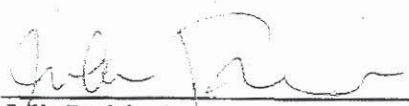
27
28 DATED: 10/31/2019



Plaintiff Phyu Castillo

1
2 DATED:

10/31/19


Julia Parish
LEGAL AID AT WORK
Plaintiffs' Counsel

3
4
5 DATED:

6/31/19

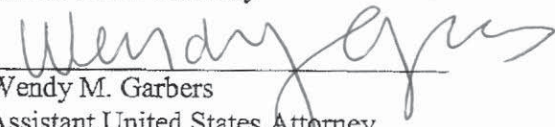

Wendy E. Musell
STEWART & MUSELL, LLP
Plaintiffs' Counsel

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9 DATED:

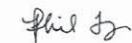
11/4/19

DAVID L. ANDERSON
United States Attorney

By:


Wendy M. Garbers
Assistant United States Attorney
Attorney for Defendant

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12 DATED: 11/1/2019


Phil Ingram
Agency Counsel
USPS Pacific Area Law Office

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19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

20 Dated: November 8, 2019

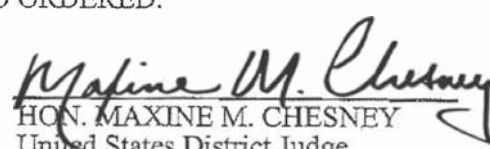

HON. MAXINE M. CHESNEY
United States District Judge

Exhibit A



November 1, 2019

RE: Supervisory Structure for May Thin Zar

To Whom It Concerns:

Please be advised that, pursuant to the resolution of an action in federal court, the Postal Service may not assign Ronaldo Caluag to supervise the employment, conduct, or performance of May Thin Zar, no matter their respective positions.

Should you have any questions about this situation, please contact the Pacific Area Law Office at (415) 550-5300.

Thank you,

A handwritten signature in black ink, appearing to read "David Morrison", written over the typed name.

David Morrison
Manager (A), Human Resources
San Francisco District

CC: May Thin Zar, City Carrier, Daly City Post Office



November 1, 2019

RE: Supervisory Structure for Phyu Castillo

To Whom It Concerns:

Please be advised that, pursuant to the resolution of an action in federal court, the Postal Service may not assign Ronaldo Caluag to supervise the employment, conduct, or performance of Phyu Castillo, no matter their respective positions.

Should you have any questions about this situation, please contact the Pacific Area Law Office at (415) 550-5300.

Thank you,

A handwritten signature in black ink, appearing to read "David Morrison", with a long horizontal flourish extending to the left.

David Morrison
Manager (A), Human Resources
San Francisco District

CC: Phyu Castillo, Carrier Technician, Daly City Post Office

Exhibit B



November 1, 2019

Ronaldo Caluag
City Carrier
Townsend Carrier Annex
San Francisco Post Office

via Hand Delivery

RE: Instruction to Stay Away

Mr. Caluag:

This letter notifies you that the instructions in the attached April 9, 2018, letter from Abraham Cooper are indefinite in duration, irrespective of the status of the Civil Harassment Restraining Orders to which the letter refers.

The Postal Service will communicate these instructions to appropriate management officials as necessary to ensure their ongoing enforcement. Failure to adhere to these instructions may result in corrective action, up to and including removal.

Thank you,

A handwritten signature in black ink, appearing to read "David Morrison", written over a horizontal line.

David Morrison
Manager (A), Human Resources
San Francisco District

Attachments: Plaintiffs' Complaint
Defendant's Answer
Letter from Abraham Cooper dated April 9, 2018

CC: Robert DiPaolo, Manager, Labor Relations, San Francisco District
Abraham Cooper, Postmaster, San Francisco
Iris Ledesma, Manager, Customer Services, San Francisco-TCA
Joseph Cheng, Supervisor, Customer Services, San Francisco-TCA
April Petty, Supervisor, Customer Services, San Francisco-TCA
Wendy Berni, Supervisor, Customer Services, San Francisco-TCA
Jo Anne Gallow, Supervisor, Customer Services, San Francisco-TCA
Harley Palaganas, Supervisor, Customer Services, San Francisco-TCA
Rebecca Inshaw, Supervisor, Customer Services, San Francisco-TCA
May Thin Zar, City Carrier, Daly City Post Office
Phyu Castillo, Carrier Technician, Daly City Post Office
Ophelia Sosa, National Association of Letter Carriers

Julia Parish (SBN 279065)
 E-Mail: jparish@legallaidatwork.org
 Katherine Wutchiett (SBN 308240)
 E-Mail: kwutchiett@legallaidatwork.org
LEGAL AID AT WORK
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 Tel: (415) 864-8848
 Fax: (415) 593-0096

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 Fax: (415) 520-0920

Attorneys for Plaintiffs
 May Thin Zar
 Phyu Castillo

**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

MAY THIN ZAR and PHYU CASTILLO,
 Plaintiffs,
 v.

MEGAN J. BRENNAN, POSTMASTER
 GENERAL OF THE UNITED STATES
 POSTAL SERVICE,
 Defendant.

Case No. 19-cv-250
**PLAINTIFFS' COMPLAINT FOR
 DAMAGES AND DECLARATORY
 AND INJUNCTIVE RELIEF**

1. Discrimination and Harassment
 based on sex – Title VII
 (42 U.S.C. § 2000e, et seq.);
2. Retaliation – Title VII
 42 U.S.C. § 2000e, et seq.);

DEMAND FOR JURY TRIAL

Case No. 19-cv-250

1 Plaintiffs May Thin Zar and Phyu Castillo allege as follows:

2 **INTRODUCTION**

3 1. Plaintiffs May Thin Zar and Phyu Castillo (“Plaintiffs” or “Ms. Thin Zar” and
4 “Ms. Castillo”), are employees of the United States Postal Service (“Defendant” or “U.S.P.S”) in
5 Daly City, California. They bring this Title VII action for sexual harassment and sex
6 discrimination perpetrated by their supervisor and co-employee, Ronald Caluag. Mr. Caluag’s
7 harassing conduct included restraining Plaintiffs against their will; engaging in unwelcomed
8 offensive touching, grabbing, and kissing; and making unwelcomed lewd, sexual, and aggressive
9 comments. This sexually harassing conduct was both severe and pervasive and created a hostile
10 work environment for Plaintiffs. Although aware of Mr. Caluag’s conduct, the U.S.P.S failed to
11 adequately protect Plaintiffs. Plaintiffs also bring a claim for retaliation.

12 2. Plaintiffs seek an injunction that prohibits the U.S.P.S. from assigning Mr. Caluag
13 to any facility at which the Plaintiffs are working and that requires the U.S.P.S. to take all steps
14 necessary to protect Plaintiffs and other female employees from sexual harassment and
15 discrimination by Mr. Caluag. Plaintiffs also seek an award of compensatory damages for pain
16 and suffering, reasonable attorneys’ fees, and costs.

17 **JURISDICTION AND VENUE**

18 3. This court has jurisdiction over the subject matter pursuant to 28 U.S.C. §§ 1331,
19 1343(a)(4). This action arises under federal law: Title VII of the Civil Rights Act of 1964, 42
20 U.S.C. § 2000e, *et seq.*

21 4. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §
22 1391(e), because the unlawful practices alleged in this complaint occurred in the Northern
23 District of California.

24 **INTRADISTRICT ASSIGNMENT**

25 5. Assignment of this action to the San Francisco Division of this Court is proper
26 pursuant to Local Rule 3-2(c) and (d) because the events giving rise to this action occurred in
27 San Mateo County, California.

PARTIES

6. Plaintiff May Thin Zar is, and at all relevant times was, a resident of the Northern District of California and employed by Defendant U.S.P.S. at its Post Office in Daly City.

7. Plaintiff Phyu Castillo is, and at all relevant times was, a resident of the Northern District of California and employed by Defendant U.S.P.S. at its Post Office in Daly City.

8. Defendant Megan J. Brennan is Postmaster General of the U.S.P.S. and is therefore head of the relevant executive agency. Accordingly, Ms. Brennan is named as defendant in this action pursuant to 28 U.S.C. § 2000e-16(c). Defendant is sued in her official capacity only.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

9. Plaintiff May Thin Zar filed an informal EEO complaint on December 8, 2017, followed by a formal EEO complaint on approximately March 20, 2018. In mid-April, Ms. Thin Zar responded to the Acceptance for Investigation, requesting that the EEO investigate all complaints alleged in her complaint. The EEO investigated and issued its final agency decision on November 13, 2018.

10. Plaintiff Phyu Castillo filed an informal EEO complaint on approximately January 9, 2018, which she amended on or about February 28, 2018, followed by a formal EEO complaint on approximately April 4, 2018. The EEO investigated and issued its final agency decision on October 18, 2018.

11. Plaintiffs have fully exhausted their administrative remedies and are entitled to file in the district court.

FACTS

May Thin Zar

12. Ms. Thin Zar is female. She began working for the U.S.P.S. at its Daly City location in September 2016 and continues to be employed there. Her primary job duties include preparing and delivering mail.

13. Soon after beginning her employment, Ms. Thin Zar noticed that Mr. Caluag watched her and tried to stay in close proximity to her. Shortly thereafter, almost every shift that he supervised Ms. Thin Zar, approximately once weekly, Mr. Caluag started telling her that he liked

1 and loved her and wanted to go on a date with her. Ms. Thin Zar would tell Mr. Caluag that she was
2 married, that she was not interested in him, and that she did not want a relationship with him. Ms.
3 Thin Zar worried about being alone with Mr. Caluag and asked a coworker to stay with her at the
4 end of their shift. On at least one occasion, Mr. Caluag asked the coworker to leave, so that he could
5 drive Ms. Thin Zar home alone.

6 14. In early to mid-2017, the coworker that stayed with Ms. Thin Zar transferred to
7 another office. Mr. Caluag began touching, sniffing, smelling, and kissing Ms. Thin Zar's hair and
8 attempting to kiss her cheek during almost every shift that he supervised her. This was frightening
9 and offensive to Ms. Thin Zar. Because of Mr. Caluag's conduct, Ms. Thin Zar asked other
10 coworkers to wait for her at the end of their shift and leave with her. She told some of these
11 coworkers that the reason for her request was that she did not want to be alone with Mr. Caluag,
12 because he would try to touch or kiss her.

13 15. In around June 2017, Mr. Caluag asked Ms. Thin Zar to help him with a task in a
14 private office. Because Mr. Caluag was Ms. Thin Zar's supervisor, she said yes. Once they were
15 inside the office, he closed the door, restrained her, and kissed her. Ms. Thin Zar was terrified. She
16 turned her head so that he could only kiss her cheek, yelled, struggled to get away, broke free, and
17 ran out of the room.

18 16. Mr. Caluag started asking Ms. Thin Zar to go into private offices with him almost
19 every shift that he supervised her, approximately once weekly. On one occasion, soon after the June
20 attack, Mr. Caluag grabbed Ms. Thin Zar's wrist and tried to drag her back into a private office. Ms.
21 Thin Zar yelled and struggled free, but injured her wrist in the process.

22 17. On or about October 29, 2017, Mr. Caluag waited for Ms. Thin Zar near the exit at
23 the end of her shift. Ms. Thin Zar told Mr. Caluag that she wanted to go home, but Mr. Caluag came
24 toward Ms. Thin Zar and grabbed her, wrapping his arms around her, kissing her aggressively with
25 his tongue, causing her to fall down, and then falling on top of her. Through the entire incident, Ms.
26 Thin Zar struggled to get away. Eventually, she escaped and left. Ms. Thin Zar reported this
27 incident to her supervisor on or about the next day. She was afraid for her job, but believed that if
28

1 she did not do something, the sexual attacks against her would continue to escalate and Mr. Caluag
2 would rape her.

3 18. After Ms. Thin Zar reported what had happened and her fear that Mr. Caluag would
4 attack her, she continued to be required to work with him. Mr. Caluag would glare at her when he
5 saw her around the office and laugh. This was frightening to Ms. Thin Zar and demonstrated that
6 Mr. Caluag did not take her complaints seriously and that he was untouchable. Ms. Thin Zar is
7 informed and believes that Mr. Caluag told her coworkers that she would be fired for reporting him.
8 During the investigation of her complaint, management warned Ms. Thin Zar to “be careful”
9 because Mr. Caluag had complained about her. Ms. Thin Zar continued working, afraid both for her
10 safety and her job.

11 19. The trauma of the attacks and subsequent fear for her safety have caused Ms. Thin
12 Zar to experience severe distress, for which she has sought medical care. Ms. Thin Zar felt
13 humiliated and degraded by the sexual attacks and worries how they will impact how she is viewed
14 in her community. Ms. Thin Zar continues to fear that Mr. Caluag will attack her while she is
15 delivering the mail.

16 **Phyu Castillo**

17 20. Ms. Castillo began working for the U.S.P.S. around 2001. By 2003, she transferred
18 to the Daly City Post Office. Her primary job duties include preparing and delivering mail.

19 21. At the Daly City Post Office, Ms. Castillo worked with Mr. Caluag. When Mr.
20 Caluag and Ms. Castillo were alone together, Mr. Caluag would leer at Ms. Castillo’s breasts and
21 make salacious comments like, “mmmmm,” or “I want some of this,” on about a weekly basis.

22 22. This continued through 2009, when Mr. Caluag’s behavior escalated. He began
23 touching Ms. Castillo and suggesting that they perform sexual acts together. Often, he would grab
24 her hand and try to drag her into a bathroom or private space.

25 23. In or around 2016, Mr. Caluag became a supervisor. He became yet more
26 aggressive, frequently commenting on Ms. Castillo’s breasts and asking her for kisses.

27 24. In or around September 2017, Ms. Castillo approached Mr. Caluag to ask him about
28 a union matter. In response, Mr. Caluag suggested that they go downstairs to smoke. When Ms.

1 Castillo and Mr. Caluag got down the stairs and were isolated, Mr. Caluag grabbed her, pressed his
2 erect penis against her body, held her, and tried to kiss her. Ms. Castillo struggled free, repeating,
3 “No!” and escaped to the parking lot. At the time, Ms. Castillo was afraid to report Mr. Caluag,
4 because he was a supervisor and had held positions of power at work and in the union. Mr. Caluag’s
5 abusive sexual behavior was open and notorious in the workplace for years and it appeared that
6 U.S.P.S. took no effective actions to prevent or end it.

7 25. In November of 2017, Ms. Castillo learned that Mr. Caluag had assaulted her
8 coworker, Ms. Thin Zar. Ms. Castillo was terrified for her own safety and that of her coworkers.
9 Ms. Castillo reported what had happened to her to the Postmaster and explained that she did not feel
10 safe at work.

11 26. Ms. Castillo continued to be required work shifts which could overlap with Mr.
12 Caluag’s. When he saw her, Mr. Caluag glared or stared at Ms. Castillo. Ms. Castillo learned that
13 Mr. Caluag had told other U.S.P.S. employees and supervisors that he felt sorry for Ms. Castillo and
14 that Ms. Castillo had only reported him to get out of having to work. There appeared to be no
15 consequences for this retaliatory conduct. Ms. Castillo felt afraid for her safety and reported Mr.
16 Caluag’s statements to the Postmaster Charles Bolton.

17 27. The trauma of the attacks and subsequent fear for her safety have caused Ms.
18 Castillo to experience severe distress, for which she has sought medical care. Ms. Castillo felt
19 humiliated and degraded by the attack. Ms. Castillo continues to fear that Mr. Caluag will attack her
20 while she is delivering the mail.

21 28. Upon information and belief, Mr. Caluag has sexually assaulted and harassed other
22 female U.S.P.S. employees. Despite multiple women, including Plaintiffs, coming forward at great
23 risk to themselves and describing the sexual attacks against them, the U.S.P.S. has refused to take
24 prompt or effective action, brushing off the sexual assaults, requiring Plaintiffs to work with Mr.
25 Caluag, and refusing to take adequate actions to address the harassment and discrimination against
26 Plaintiffs. The U.S.P.S. keeps Mr. Caluag working in positions of actual or perceived authority
27 where he has access to women he can exploit and abuse in the workplace.
28

FIRST CLAIM FOR RELIEF
Sexual Harassment and Sex Discrimination
(Title VII, 42 U.S.C. §§ 2000e, et. seq.)
[On Behalf of Both Plaintiffs]

29. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as though fully stated here.

30. Title VII prohibits Defendant U.S.P.S. from discriminating against any employee on the basis of sex. Discrimination on the basis of sex includes sexual harassment.

31. In perpetrating the above-described acts and omissions, Defendant, its agents, servants, and/or employees, engaged in unlawful sexual harassment and discrimination in violation of Title VII.

32. Defendant, its agents, and employees engaged in targeted harassment against Plaintiffs because of their sex. Defendant subjected Plaintiffs to unwelcome sexual comments and sexual attacks and acts that were terrifying, humiliating, harmful, and degrading. Mr. Caluag's sexual harassment caused Plaintiffs pain, stress, and anxiety. Plaintiffs obtained medical care for these conditions. The above-mentioned unwelcomed acts were severe or pervasive and created a hostile work environment for Plaintiffs.

33. Plaintiffs perceived the working environment to be abusive or hostile, which caused Plaintiffs sufficient stress and anxiety to require medical care.

34. Because Mr. Caluag acted as Plaintiffs' supervisor, U.S.P.S. is strictly liable for Mr. Caluag's sexual harassment of Plaintiffs.

35. Additionally, U.S.P.S. knew or should have known of Mr. Caluag's sexual harassment and the resulting hostile work environment, but nevertheless failed to take prompt and effective remedial action. Accordingly, U.S.P.S. is liable for Mr. Caluag's sexual harassment even if he was not acting as a supervisor. Plaintiffs were harmed because of the foregoing described conduct of Defendant, which was a substantial factor in causing Plaintiffs harm.

36. As a direct and proximate result of the actions alleged herein, Plaintiffs have and will suffer damages including, but not limited to pain, suffering, humiliation, shame, anxiety,

embarrassment, mortification, hurt feelings, physical harm, and emotional distress, all in an amount to be proven at trial.

37. Plaintiffs are entitled to statutory attorneys' fees and costs, and other appropriate relief as determined by this court.

SECOND CLAIM FOR RELIEF
Retaliation
(Title VII, 42 U.S.C. §§ 2000e, et seq.)
[On Behalf of Both Plaintiffs]

38. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as though fully stated here.

39. Title VII prohibits Defendant from retaliating against any employee because she engaged in a protected activity. Resisting and/or complaining of sexual harassment is a protected activity under Title VII.

40. Defendant and its agents, servants, and/or employees, engaged in unlawful retaliation in violation of Title VII.

41. Plaintiffs engaged in protected activity by resisting and complaining of sexual harassment and requesting to be protected from Mr. Caluag.

42. Defendant, its agents, and/or employees retaliated against Plaintiffs on the basis of their protected activity, and took material and adverse employment actions against them, including by creating and permitting a hostile work environment and requiring Plaintiffs to continue to work with Mr. Caluag even after they described sexual attacks against them that rise to the level of sexual assault and explained their fears of further attacks. U.S.P.S. led Plaintiffs to believe that Mr. Caluag was untouchable, and that they would never be able to safely work again. Mr. Caluag was permitted to spread gossip after Plaintiffs complained of harassment which caused Plaintiff Thin Zar to fear for her job and humiliated Ms. Castillo. Defendant failed to take effective remedial action such that the Defendant's action would deter a reasonable employee in the same situation from making a complaint.

43. As a direct and proximate result of the actions alleged herein, Plaintiffs have and will suffer damages including, but not limited to, pain, suffering, humiliation, shame, anxiety,

embarrassment, mortification, hurt feelings, physical harm, and emotional distress, all in an amount to be proven at trial.

44. Plaintiffs are entitled to statutory attorneys' fees and costs, and other appropriate relief as determined by this court.

INJUNCTIVE RELIEF

45. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as though fully stated here.

46. Plaintiffs seek an injunction that prohibits the U.S.P.S. from assigning Mr. Caluag to any facility at which Plaintiffs are working, and that requires the U.S.P.S. to take all steps necessary to protect Plaintiffs and other female employees from sexual harassment and discrimination by Mr. Caluag.

47. Plaintiffs seek effective training that addresses sexual assault, sexual harassment, sexual discrimination, and retaliation in the workplace.

48. No previous application for injunctive relief sought herein has been made to this Court.

49. If this Court does not grant the injunctive relief sought herein, Plaintiffs will be irreparably harmed.

50. No plain, adequate, or complete remedy at law is available to Plaintiffs to redress the wrongs addressed herein.

DECLARATORY RELIEF

51. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as though fully stated here.

52. An actual controversy has arisen and now exists relating to the rights and duties of the parties herein in that Plaintiffs contend that Defendant violated their rights not to be subjected to sexual harassment and retaliation. On information and belief, Defendant denies these allegations. Declaratory relief is therefore necessary and appropriate.

53. Plaintiffs seek a judicial declaration of the rights and duties of the respective parties.

REQUEST FOR RELIEF


WHEREFORE, Plaintiffs prays for relief as follows:

1. For declaratory judgment that the practices complained of in this complaint are unlawful and violate Title VII;
2. For injunctive relief, including but not limited to appropriate discipline and prevention of Mr. Caluag from working with Plaintiffs at the Daly City USPS office and requiring institutional adherence to reasonable sex harassment policies consistent with Title VII;
3. For compensation denied or lost to Plaintiffs by reason of the unlawful acts alleged herein, in an amount to be proven at trial;
4. For payment of compensatory damages for Plaintiffs' emotional pain and suffering, in an amount to be proven at trial;
5. For Plaintiffs' attorneys' fees and costs;
6. For payment of interest at the legal rate on such damages as appropriate, including pre- and post- judgment interest; and
7. For any further relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, hereby demand a trial by jury of each and every cause of action so triable.

DATED: January 14, 2019

By: 
Katherine Wutchiett

Attorneys for Plaintiffs
May Thin Zar & Phyu Castillo

LEGAL AID AT WORK
Julia Parish
Katherine Wutchiett
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7 Attorneys for Defendant
8 POSTMASTER GENERAL

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 MAY THIN ZAR and PHYU CASTILLO;

13 Plaintiffs,

14 v.

15 MEGAN J. BRENNAN, POSTMASTER
16 GENERAL OF THE UNITED STATES
POSTAL SERVICE;

17 Defendant.

Case No. 19-250-MMC

**DEFENDANT'S ANSWER TO PLAINTIFFS'
COMPLAINT**

DEMAND FOR JURY TRIAL

18
19 **ANSWER**

20 The Postmaster General hereby responds to Plaintiffs' Complaint for Damages and Declaratory
21 and Injunctive Relief ("Complaint") as follows:

- 22 1. Defendant admits that Plaintiffs are employees of the United States Postal Service
23 ("USPS"), stationed in Daly City, California. Defendant admits that Plaintiffs purport to bring this
24 employment discrimination action under Title VII, but denies that their claims have merit. Except as
25 expressly admitted, Defendant denies the allegations in Paragraph 1.
- 26 2. Defendant admits that Plaintiffs seek damages, injunctive relief and attorneys' fees, but
27 denies that any such relief is appropriate. Except as expressly admitted, Defendant denies the
28 allegations in Paragraph 2.

3. Defendant admits that this Court has federal question jurisdiction over this matter.

4. Defendant admits that this matter is properly venued in the Northern District of California.

5. Defendants admits that assignment of this action to the San Francisco Division is proper under Local Rule 3-2(d).

6. Defendant admits that Plaintiff May Thin Zar is employed by the USPS at Daly City. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in Paragraph 6 and, on that basis, denies them.

7. Defendant admits that Plaintiff Phyu Castillo is employed by the USPS at Daly City. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in Paragraph 7 and, on that basis, denies them.

8. Defendant admits that the Postmaster General is the proper defendant in this employment action, in her official capacity.

9. Defendant denies that Plaintiff Zar filed an informal EEO complaint on December 8, 2017. Defendant admits that Plaintiff Zar submitted a formal EEO complaint on approximately March 20, 2018. Defendant admits that it investigated Plaintiff Zar's formal EEO complaint and, at her request, issued its Final Agency Decision, dated November 13, 2018. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in Paragraph 9 and, on that basis, denies them.

10. Defendant denies that Plaintiff Castillo filed an informal EEO complaint on January 9, 2018. Defendant admits that Plaintiff Castillo submitted a document titled Amended Charge of Discrimination, which was dated February 27, 2018. Defendant admits that Plaintiff Castillo submitted a formal complaint of discrimination on approximately April 4, 2018. Defendant admits that it investigated Plaintiff Castillo's formal EEO complaint and, at her request, issued its Final Agency Decision, dated October 18, 2018.

11. Defendant denies that Plaintiff Castillo has exhausted her administrative remedies related to conduct that occurred more than 45 days before she contacted an EEO counselor on or about January 9, 2018, as such contact was untimely.

12. Defendant admits the allegations in Paragraph 12.

13. Defendant admits that, beginning in or around March 2017, Mr. Caluag made romantic overtures towards Plaintiff Zar—conduct which caused Defendant to issue him a Notice of Removal. Defendant denies that Mr. Caluag was a “supervisor” within the meaning of federal law. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in Paragraph 13 and, on that basis, denies them.

14. Defendant admits that, beginning in or around March 2017, Mr. Caluag made romantic overtures towards Plaintiff Zar—conduct which caused Defendant to issue him a Notice of Removal. Defendant denies that Mr. Caluag was a “supervisor” within the meaning of federal law. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in Paragraph 14 and, on that basis, denies them.

15. Defendant admits that sometime between April and June 2017, Mr. Caluag called Plaintiff Zar into an office, wherein he attempted to hug and kiss her without her consent—an offense for which Defendant issued him a Notice of Removal. Defendant denies that Mr. Caluag was a “supervisor” within the meaning of federal law. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in Paragraph 15 and, on that basis, denies them.

16. Defendant admits that in or around the beginning of October 2017, Mr. Caluag grabbed Plaintiff Zar’s wrist to stop her from leaving his presence after she told him not to touch her—an offense for which Defendant issued him a Notice of Removal. Defendant denies that Mr. Caluag was a “supervisor” within the meaning of federal law. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in Paragraph 16 and, on that basis, denies them.

17. Defendant admits that on or about October 29, 2017, Mr. Caluag attempted to kiss, or did kiss, Plaintiff Zar without her consent—an offense for which Defendant issued him a Notice of Removal. Defendant denies that Mr. Caluag was a “supervisor” within the meaning of federal law. Defendant denies that Plaintiff Zar reported this incident to her supervisor the next day. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in Paragraph 17 and, on that basis, denies them.

18. Defendant admits that, immediately following her report, Plaintiff Zar and Mr. Caluag

1 remained employed with the USPS at the same facility. However, Defendant immediately instruct Mr.
2 Caluag not to have contact with Plaintiff Zar. Defendant denies that Mr. Caluag was “untouchable”—as
3 soon as Plaintiff Zar complained about him, the USPS investigated, issued a Noticed of Removal, and
4 permanently transferred him to another facility. Defendant is without sufficient knowledge to admit or
5 deny the remainder of the allegations in Paragraph 18 and, on that basis, denies them.

6 19. Defendant denies that there is any evidence to suggest that Mr. Caluag will attack
7 Plaintiff Zar while she is delivering mail and notes that he has been transferred to a different facility and
8 that the USPS has instructed him to obey the restraining order Plaintiff Zar obtained from San Mateo
9 Superior Court on pain of corrective action, up to and including his removal from employment.
10 Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in
11 Paragraph 19 and, on that basis, denies them.

12 20. Defendant admits the allegations in Paragraph 20.

13 21. Defendant admits that Mr. Caluag was also employed at the Daly City Post Office.
14 Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in
15 Paragraph 21 and, on that basis, denies them.

16 22. Defendant is without sufficient knowledge to admit or deny the allegations in Paragraph
17 22 and, on that basis, denies them.

18 23. Defendant denies that Mr. Caluag was a “supervisor” within the meaning of federal law.
19 Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in
20 Paragraph 23 and, on that basis, denies them.

21 24. Defendant denies that Mr. Caluag was a “supervisor” within the meaning of federal law.
22 Defendant further denies that anyone can be both a “supervisor” and hold a position of power within a
23 collective bargaining unit, as “supervisors” cannot even be members of a bargaining unit under the National
24 Labor Relations Act. Defendant denies that Mr. Caluag engaged in “abusive sexual behavior” that was
25 “open and notorious in the workplace for years.” Defendant denies that the USPS failed to take effective
26 actions to prevent or end any unlawful conduct of which it was aware. Defendant admits that, in September
27 2017, Mr. Caluag grabbed Plaintiff Castillo by the shoulders, pulled her close to him, and attempted to kiss
28 her on the mouth without her consent—an offense for which Defendant issued him a Notice of Removal.

1 Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in
2 Paragraph 24 and, on that basis, denies them.

3 25. Defendant admits that, at the end of November 2017, while the USPS was investigating
4 Plaintiff Zar's complaints, Plaintiff Castillo submitted a written statement accusing Mr. Caluag of sexual
5 misconduct. Defendant is without sufficient knowledge to admit or deny the remainder of the
6 allegations in Paragraph 25 and, on that basis, denies them.

7 26. Defendant admits that after Plaintiff Castillo complained about Mr. Caluag, they both
8 continued to be employed by the USPS and to work in the Daly City Post Office. Defendant admits that
9 Plaintiff Castillo informed Officer-in-Charge Charles Bolton that she believed Mr. Caluag was gossiping
10 about the complaints against him and that Mr. Caluag looked at her. Defendant denies that the USPS
11 failed to take action based on these allegations. After learning of the complaints, the USPS investigated,
12 issued a Noticed of Removal, and permanently transferred Mr. Caluag to another facility. Defendant is
13 without sufficient knowledge to admit or deny the remainder of the allegations in Paragraph 26 and, on
14 that basis, denies them.

15 27. Defendant denies that there is any evidence to suggest that Mr. Caluag will attack
16 Plaintiff Castillo while she is delivering mail and notes that he has been transferred to a different facility
17 and that the USPS has instructed him to obey the restraining order Plaintiff Castillo obtained from San
18 Mateo Superior Court on pain of corrective action, up to and including his removal from employment.
19 Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in
20 Paragraph 27 and, on that basis, denies them.

21 28. Defendant lacks any information to suggest that Mr. Caluag has sexually assaulted or
22 harassed other employees and, on that basis, denies said allegation. Defendant denies that the USPS
23 failed to take prompt or effective action in response to any complaints it received regarding Mr. Caluag.
24 Defendant denies that the USPS "brushed off the sexual assaults." Defendant admits that Mr. Caluag
25 continued to be employed at the Daly City Post Office until January 2018, but denies that either Plaintiff
26 was required to work with him after her complaints. Indeed, the USPS instructed Mr. Caluag to stay
27 away from Plaintiffs. Defendant denies that the USPS has refused to take adequate actions to address
28 harassment and discrimination against either Plaintiff, or any other employee. Defendant denies that

1 Mr. Caluag currently works in positions of actual or perceived authority. Defendant denies that Mr.
2 Caluag was ever a “supervisor” within the meaning of federal law. Except as expressly admitted, Defendant
3 denies the allegations in Paragraph 28.

4 29. Defendant incorporates by reference its response to each allegation set forth above as if
5 fully set forth herein.

6 30. Paragraph 30 consists solely of legal conclusions regarding the requirements of Title VII,
7 to which no response is required.

8 31. Defendant denies the allegations in Paragraph 31.

9 32. Defendant admits that Mr. Caluag’s behavior, as cited in its Notice of Removal, was
10 contrary to Defendant’s policies and requirements for employees. Defendant lacks sufficient
11 information to admit or deny the allegations regarding Plaintiffs’ state of mind and medical care and, on
12 that basis, denies them. Defendant otherwise denies the allegations in Paragraph 32.

13 33. Defendant is without sufficient knowledge to admit or deny the allegations in Paragraph
14 33 and, on that basis, denies them.

15 34. Defendant admits that Mr. Caluag had limited power to direct Plaintiffs’ work tasks one
16 day a week at certain times relevant to their Complaint. However, Defendant denies that Mr. Caluag
17 was ever a “supervisor” within the meaning of federal law. Except as expressly admitted, Defendant
18 denies the allegations in Paragraph 34.

19 35. Defendant denies the allegations in Paragraph 35.

20 36. Defendant denies the allegations in Paragraph 36.

21 37. Defendant denies the allegations in Paragraph 37.

22 38. Defendant incorporates by reference its response to each allegation set forth above as if
23 fully set forth herein.

24 39. Paragraph 39 consists solely of legal conclusions regarding the requirements of Title VII,
25 to which no response is required.

26 40. Defendant denies the allegations in Paragraph 40.

27 41. Defendant admits that opposing discrimination on the basis sex and complaining about it
28 are protected activities under Title VII. Except as expressly admitted, Defendant denies the allegations

in Paragraph 41.

42. Defendant denies the allegations in Paragraph 42.

43. Defendant denies the allegations in Paragraph 43.

44. Defendant denies the allegations in Paragraph 44.

45. Defendant incorporates by reference its response to each allegation set forth above as if fully set forth herein.

46. Defendant admits that Plaintiffs seek injunctive relief, but denies that any such relief is appropriate. Except as expressly admitted, Defendant denies the allegations in Paragraph 46.

47. Defendant admits that Plaintiffs seek injunctive relief, but deny that any such relief is appropriate. Except as expressly admitted, Defendant denies the allegations in Paragraph 47.

48. Defendant is without sufficient knowledge to admit or deny the allegations in Paragraph 48 and, on that basis, denies them.

49. Defendant denies the allegations in Paragraph 49.

50. Defendant denies the allegations in Paragraph 50.

51. Defendant incorporates by reference its response to each allegation set forth above as if fully set forth herein.

52. Defendant admits that Plaintiffs seek declaratory relief, but denies that any such relief is appropriate. Except as expressly admitted, Defendant denies the allegations in Paragraph 52.

53. Defendant admits that Plaintiffs seek declaratory relief, but denies that any such relief is appropriate. Except as expressly admitted, Defendant denies the allegations in Paragraph 53.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE (Prompt Corrective Action)

1. Plaintiffs' claims are barred, in whole or in part, because Defendant exercised reasonable care to prevent and correct promptly any allegedly discriminatory, harassing, or retaliatory behavior.

SECONDAFFIRMATIVE DEFENSE (Effective Administrative Process—*Ellerth/Faragher*)

2. Defendant maintains and effective administrative process for preventing and correcting

1 any improper, retaliatory, discriminatory and harassing conduct and Plaintiffs unreasonably failed to
2 avail themselves of these opportunities to protect themselves from any allegedly improper conduct.

3
4 **THIRD AFFIRMATIVE DEFENSE**
(Failure to Mitigate)

5 3. To the extent that Plaintiffs have failed to mitigate their damages, their recovery is
6 limited accordingly.

7
8 **FOURTH AFFIRMATIVE DEFENSE**
(Exhaustion of Administrative Remedies)

9 4. To the extent that Plaintiffs allege or assert matters not contained in a legally sufficient and
10 timely administrative claim, such claims are barred by the exhaustion of administrative remedies doctrine.
11 For example, Plaintiff Castillo's claims based on conduct that occurred more than 45 days before she
12 contacted an EEO counselor on or about January 9, 2018, are barred.

13
14 **FIFTH AFFIRMATIVE DEFENSE**
(Mixed Motive)

15 5. To the extent that Plaintiffs demonstrates that a discriminatory or retaliatory motive
16 played a part in the challenged actions, which Defendant denies, Defendant asserts that the same actions
17 would have been taken absent the discriminatory or retaliatory motive.

18
19 **SIXTH AFFIRMATIVE DEFENSE**
(Lack of Agency)

20 6. To the extent that Plaintiffs demonstrates that employees of Defendant committed
21 unlawful acts, as alleged in the Complaint, which Defendant does not concede, Defendant asserts that
22 such unlawful acts were committed outside the scope of employment and not by agents of Defendant.

23
24 The Postmaster General reserves the right to assert additional affirmative defenses as discovery
25 develops and warrants.

PRAYER FOR RELIEF

WHEREFORE, the Postmaster General prays that:

1. Plaintiffs takes nothing by their Complaint;
2. The Postmaster General has judgment against Plaintiffs;
3. The Postmaster General be awarded her costs of suit; and
4. For such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Defendant hereby demands trial by jury.

DATED: March 18, 2019

Respectfully submitted,

DAVID L. ANDERSON
United States Attorney

/s/ Wendy M. Garbers
WENDY M. GARBERS
Assistant United States Attorney
Attorney for Defendant



April 9, 2018

Ronald Caluag



Subject: Letter of Instruction

Mr. Caluag:

The Postal Service has learned that May Thin Zar has obtained a Civil Harassment Restraining Order prohibiting you to be within 100 yards of her until April 2, 2020, including while either of you may be at work. The Postal Service has similarly learned that Phyu Castillo has also obtained a Civil Harassment Restraining Order prohibiting you to be within 100 yards of her until April 2, 2020, including while either of you may be at work. Therefore, to avoid further conflict between you and these employees, the Postal Service is issuing you the following instructions.

Effective immediately, and except as otherwise permitted by the National Labor Relations Act, you are hereby instructed as follows:

1. You are to stay away from and avoid May Thin Zar any time you are on Postal Service property or conducting Postal Service business. This means you have the obligation to leave any area where May Thin Zar is.
2. You are to stay away from and avoid Phyu Castillo any time you are on Postal Service property or conducting Postal Service business. This means you have the obligation to leave any area where Phyu Castillo is.
3. You are not to visit the Daly City Post Office under any circumstances unless you are legally entitled to do so in your capacity as a Postal Service customer. If you have cause to go to the Daly City Post Office as a customer, you are to avoid any contact with Phyu Castillo and May Thin Zar, to complete your business expeditiously, and to exit the property immediately upon completion. For clarity, as a customer, you are not entitled to be in any area restricted to employees only.
4. You are not to contact May Thin Zar on- or off-duty in person or via text, telephone call, personal message, or via any other means. You are also not to have someone else contact her on your behalf.
5. You are not to contact Phyu Castillo on- or off-duty in person or via text, telephone call, personal message, or via any other means. You are also not to have someone else contact her on your behalf.

6. You are to conduct yourself in an appropriate manner as required by Postal Service policies. These requirements include, but are not limited to:

- a. treating your coworkers respectfully;
- b. not harassing anyone, at any level, in any way;
- c. not making sexual, romantic, or otherwise inappropriate comments or jokes to your coworkers;
- d. not using any language of a sexual nature;
- e. not threatening anyone; and
- f. obeying the terms of the Civil Harassment Restraining Orders the San Mateo Superior Court filed against you on April 3, 2018.

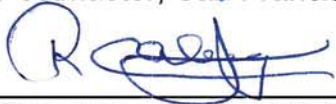
Employee & Labor Relations Manual ("ELM") Section 665.24 prohibits bullying and harassment of any kind. Further, ELM Section 665.16 requires that employees conduct themselves in a way that reflects favorably on the Postal Service, especially during working hours. These policies unequivocally prohibit the conduct described in the allegations the Postal Service has received against you regarding these two employees and those which formed the basis of the Civil Harassment Restraining Orders filed against you. Should management determine after investigation that you have engaged in any such behaviors in the future, or that you have taken any steps to undermine the Civil Harassment Restraining Orders other than properly challenging them through applicable legal process, you will be subject to corrective action, up to and including removal.

Please note that ELM Section 665.15 requires your adherence to the instructions contained in this Letter. If the Postal Service determines after investigation that you have violated any instruction in this Letter, you may be subject to whatever corrective action is appropriate pursuant to Postal Service policies, collective bargaining agreements, and other applicable law, up to and including removal.

This Letter is non-disciplinary; you have no right to appeal this Letter. There is no limitation to the instructions given in this Letter, and this Letter supersedes any verbal instructions you may receive in the future that contradict it.



Abraham Cooper
Postmaster, San Francisco Post Office



Signature of Ronald Caluag for Purposes of Receipt Only

4/12/2018

Date

Exhibit C

Discrimination is Illegal.

1. You have the right not to be discriminated against, treated worse, or harassed because of your race, color, religion, national origin, age, current or past disability status, genetic information, or sex (including pregnancy, sexual orientation, gender identity, or transgender status).
2. To make a complaint about harassment or discrimination, you must contact the Postal Service's Equal Employment Opportunity (EEO) Office **within 45 days**.
3. You can make a complaint online at **<https://efile.usps.com>**.

Retaliation is Illegal.

You have the right to oppose discrimination and participate in anti-discrimination processes free from retaliation. To report retaliation, you must contact the EEO Office **within 45 days** at **<https://efile.usps.com>**.

For immediate help with harassment, discrimination, or retaliation, contact your supervisor, postmaster, Human Resources, or the EEO Office.

For more information, see Section 666 of the Employee & Labor Relations Manual and Poster 159.

Exhibit D

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2 SARA WINSLOW (DCBN 457643)
Chief, Civil Division
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8 Attorneys for Defendant
9 POSTMASTER GENERAL

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 MAY THIN ZAR and PHYU CASTILLO,

14 Plaintiffs,

15 v.

16 MEGAN J. BRENNAN, POSTMASTER
17 GENERAL OF THE UNITED STATES
18 POSTAL SERVICE,

19 Defendant.

Case No. 19-250-MMC

**STIPULATION OF DISMISSAL WITH
PREJUDICE PURSUANT TO FRCP
41(a)(1)(A)(ii)**

20
21 It is hereby stipulated by and between the undersigned Plaintiffs MAY THIN ZAR and PHYU
22 CASTILLO and Defendant POSTMASTER GENERAL, by and through their respective attorneys, as
23 follows:

24 Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiffs and Defendant hereby
25 stipulate to dismiss with prejudice the above-captioned action. Except as expressly set forth in the
26 previously-filed Stipulation And Agreement Of Compromise And Settlement And [Proposed] Order,
27 each party is to bear her own costs and attorneys' fees.

1 **SO STIPULATED AND AGREED.**

2
3 DATED:

Julia Parish
LEGAL AID AT WORK
Counsel for Plaintiffs MAY THIN ZAR and PHYU
CASTILLO

6
7 DAVID L. ANDERSON
United States Attorney

8
9 DATED:

By:

Wendy M. Garbers
Assistant United States Attorney
Attorney for Defendant